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September 9, 2024

Windsor Town Council

Honorable Michael Goodbee

Re: Special Prosecutor findings; Matter of Barry Wilson

To Whom it May Concern:

I have completed my investigation as special prosecutor pursuant to Article V, Section 5.6(A)(3) of the Town of Windsor Home Rule Charter ("H.R.C.") for which I was appointed to investigate an ethics complaint lodged against former mayor Barry Wilson. This letter includes a summary of the facts and materials used for the investigation, along with my conclusions.

COMPLAINT

On May 10, 2024, a private citizen, Martin Lind, lodged an ethics complaint with Daniel Money, Town Attorney for the Town of Windsor, against Barry Wilson. Because Mr. Wilson, at the time of the complaint, was an elected official for the Town of Windsor, an advisory judge and special prosecutor were appointed as required by the Charter. The essence of Mr. Lind's complaint is that Mr. Wilson failed to disclose a conflict of interest and failed to recuse himself from voting on a matter that had come before the Town for action. The remedies available to the Town for ethics violations include the power to seek injunctive relief, and also to seek recovery of damages or restitution from the violator to the extent the violator financially benefitted from his or her breach of ethics. *See* Art. V, Secs. 5.8 and 5.9, H.R.C.

Mr. Lind alleges that while acting Mayor, and a voting member of the Town Board, Mr. Wilson was also the acting Executive Director of the Poudre River Trial Corridor, Inc., a non-profit corporation (the "PRTC"). In addition to grant money, the PRTC receives funding pursuant to an Intergovernmental Agreement (IGA) from the Town of Windsor, the City of Greeley, and Weld County. As Executive Director of the PRTC, Mr. Wilson receives a salary from the PRTC, and he was also compensated by the Town as its Mayor. The amount of money the Town provides the PRTC under the IGA is a part of the Town's annual budget, and that amount is connected to the PRTC's budgeted needs for capital and special projects and administrative costs including Mr. Wilson's salary. Mr. Lind alleges that Mr. Wilson has personal financial interests due to his positions of responsibility with both the Town and the PRTC and the fact that he is compensated by both. (Note: Mr. Wilson no longer receives a salary from the Town of Windsor) Wilson also necessarily had input into or influence over the budgets of both entities and PRTC's fundraising efforts. In particular it is alleged that Wilson voted to approve the Town's 2024 budget, which included the Town's share of funding for PRTC. However, Wilson did not disclose any potential conflict of interest based upon his relations with both entities, and did he abstain from voting to approve the Town's 2024 budget.

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Windsor Town Council

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INVESTIGATION

I conducted a thorough and diligent investigation into these allegations. I thoroughly reviewed the following documents:

1. Resolution 2021-74, the relevant Intergovernmental Agreement (IGA), regarding the Poudre River Trail (which was an amendment to the 2006 IGA);
2. Town of Windsor Resolution 2023-70;
3. The Town Board budget workshop packet and option resolution, dated October 14, 2023;
4. The internal line item within the Park’s budget of dues, fees, and subscriptions;
5. The relevant portions of the Town’s Charter/Code of Ethics;
6. C.R.S. 24-18-109 in its entirety;
7. C.R.S. 24-18-105 in its entirety;
8. C.R.S. 24-18-102 in its entirety;
9. **Comtois v. State Ethics Commission, 206 N.E.3d 588 (Mass.App.Ct. (2023);**
10. **United States v. Gorman, 807 F.2d 1299 (6th Cir. 1986);**
11. **Hanig v. City of Winner, 692 N.W. 2d 202 (S.D. 2005);**
12. **Tangen v. State Ethics Commission, 550 P.2d 1275 (Haw. 1976);**
13. **Parker v. Town of Gardiner Planning Bd., 184 A.D.2d 937 (N.Y.App.Div 1982);**
14. Colorado General Assembly Ethics Board, Advisory Opinion – No.1;
15. Town Board Work Sessions, May 2, 2022.

I spoke with on three occasions an associate of Michael Plachy, Esquire, with the Lewis Roca Rothgerber Christie law firm, who filed the ethics complaint on May 10, 2024, on behalf of Mr. Lind. Although attempting to glean more information regarding Mr. Lind’s complaint and what actual penalty Mr. Lind was seeking, Mr. Lind’s legal counsel essentially referred me to the ethics complaint. Because Mr. Lind was represented by counsel, I did not attempt to contact or interview Mr. Lind.

I interviewed the following individuals who had knowledge of the budget considerations specific to the PRTC line item in the Town's 2024 budget each of whom provided information as listed below:

1. Shane Hale, Windsor Town Manager.
2. Wade Willis, Windsor Open Space and Trails Manager.
3. Julie Cline, Windsor Pro Tem, and Corridor Board Member.
4. Barry Wilson.
5. Ian McCargar, Former Town Attorney
6. Daniel Money (only for my request of any relevant documents and names of potential witnesses)

**IAN MCCARGAR**

Mr. McCargar voluntarily spoke with me about matters outside attorney/client relationship privileged communication. Mr. McCargar advised that in 2021, the Town of Windsor (Town) entered into an IGA with PRTC, Weld County, and the Town of Greeley. This IGA committed the Town to funding for PRTC. The amount of funding the Town gives to PRTC is informed by PRTC’s proposed budget. The annual Town budget is voted on and approved by the Town Board.

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Mr. McCargar confirmed that Barry Wilson was a voting member of the Town Board in January 2023 and was the Executive Director of PRTC.

When the Town Board voted on the 2024 Town budget, Mr. Wilson voted, with others on the Town Board, which included funds going to PRTC. Mr. McCargar verified that, to his knowledge, no one on the Town Board, Weld County, or the Town of Greeley ever raised concerns about Mr. Wilson’s association with the Town Board or PRTC. Mr. McCargar was clear that no one raised any ethical concerns with him.

**SHANE HALE**

Shane Hale is the current Windsor Town Manager who has been with the Town for six years. Mr. Hale indicated that it is his role as Town Manager to present the budget to the Town Board and make sure that any yearly budgeting supports the Town Board’s vision for the Town. Mr. Hale also oversees day-to-day operations for the Town.

Mr. Hale was aware that Barry Wilson was the paid executive director of PRTC when he was a voting member of the Town, regarding the 2024 budget. Mr. Hale indicated that there were two previous executive directors prior to Mr. Wilson stepping into that position. No one on the Town Board or any private citizen came to him with any concerns about Barry Wilson having a conflict of interest by being the Windsor Mayor/voting Board member and being the paid executive director of the PRTC. To Mr. Hale’s knowledge it was well known by all voting Board members that Mr. Wilson held both positions at the time of the voting on the 2024 budget. Mr. Hale also indicated that the Town payment to PRTC did not increase after Mr. Wilson became the executive director.

**WADE WILLIS**

Wade Willis is the Open Space and Trails Manager for the Town. Mr. Willis has been the manager of Open Space and Trails for just short of seven years. Mr. Wilson presented to Shane Hale (for submission to the Town Board) the 2024 proposed budget for PRTC. Mr. Willis indicated that he was aware that Barry Wilson was the executive director for PRTC and a voting member of the Town Board. He also indicated that in no way did Mr. Wilson influence him for more funds for PRTC or any additional benefit to the PRTC or himself. No one on the Board nor any private citizen raised any concerns about Mr. Wilson serving on the Board and being the paid executive director of PRTC. Mr. Willis indicated that his belief is that Mr. Wilson got no direct financial gain from his position and that Mr. Wilson’s role as executive director of PRTC is a position with a non-profit entity. Mr. Wilson does not own the entity; he is merely an employee.

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**JULIE CLINE**

Ms. Cline has been a Windsor resident for thirteen years, has served on the Town Board since 2020 and previously served on the Town’s water board for seven years, and Mayor Pro Tem. Ms.

Cline is currently the Windsor Town Mayor. She was appointed as Town Mayor and officially sworn in on June 17, 2024, after the Weld County District Court ruling in the case of **James Cosner v. Barry Wilson**, which nullified the results of April’s mayoral election in which Barry Wilson was voted Mayor of Windsor. Mayor Cline has also served as the Town Board liaison to the Historic Preservation Committee, Tree Board, and the Poudre Trail Corridor Board.

Mayor Cline voluntarily spoke with me about her knowledge of the 2024 budget and specifically of the budget for PRTC. Mayor Cline acknowledged that she was aware at the time the 2024 budget was being voted on that Mr. Wilson was the executive director of PRTC and obviously, the Windsor Mayor. Mayor Cline indicated that she knows that all other Board members were aware of Mr. Wilson’s dual roles with the Town and PRTC. She said that no one indicated that they had any concerns about his dual roles. Mayor Cline said that Mr. Wilson did not in any way advocate for more money for PRTC or extra benefit for PRTC.

Mayor Cline said that Mr. Wilson did not abstain from voting on the 2024 budget and did not actively reveal any potential conflict of interest, but to her knowledge everyone on the Board who was voting was well aware of Mr. Wilson’s position with PRTC. She said that she knew for certain of his position with PRTC due to her serving as the liaison to the Poudre Trail Corridor Board. Mayor Cline said that Mr. Wilson’s non-disclosure did not change the voting process.

**BARRY WILSON**

Mr. Wilson voluntarily spoke with me and provided background information regarding the complaint against him. Mr. Wilson readily admitted that he did not (actively) disclose his position with PRTC, but that everyone who was voting on the Board was well aware of his position with PRTC. Mr. Wilson readily admitted that he did not recuse himself from voting or any decision making regarding the 2024 budget. However, he also indicated that he was not necessarily thinking, at that time, about any conflicts of interest since he was not advocating for any direct personal gain for himself. He did not, according to him, try to maximize funding to PRTC and in no way purposely tried to harm the Town’s interests.

When discussing what the Charter states regarding disclosure and recusal, Mr. Wilson did agree that the Town Charter does say that Town officials are expected to disclose any personal, financial, or other interests in matters affecting the Town. Mr. Wilson also conceded that the Charter states that if a person has a conflict of interest or even the appearance of a conflict of interest, that person should recuse themselves from any decision-making. He did say that at the time of discussion and voting on the 2024 budget he was not purposely calculating any benefit to himself or factoring in any personal gain by his position as executive director of PRTC.

Mr. Wilson provided background information of his contributions to the Town of Windsor over the past 24 years while living in Windsor with his family. He said that he has been a good neighbor. Mr. Wilson did not give specifics to me of what he has done to make Windsor a better place.

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for his neighbors but referred me to websites that have reported his many contributions to the community, which upon review are many.

FINDINGS

It is undisputed that the purpose of the Windsor Town Code as stated in section 5.1 establishes the guidelines for the ethical standards of conduct for Town officials, public body members and employees. Those town officials, public body members and employees are expected to disclose any personal, financial, or other interests in matters affecting the Town that come before them for action.

Additionally, section 5.1 states that Town officials, public body members and employees are expected to recuse themselves from decision making if they have a conflict of interest or even the appearance of one.

It is undisputed that the Windsor Town Charter, Article V, Section 5.3, sets forth a duty to disclose as follows:

 An official, public body member or employee of the Town of Windsor shall not

participate in the conduct of business on behalf of the Town or enter into discussion or deliberation of any matter without first, publicly and on the record, stating all possible conflicts of interest that may exist and between themselves and their family members, and the principals or the issue under consideration.

It is also undisputed that Mr. Wilson did not, at the time of the voting on the 2024 budget, **simultaneously** (with his vote or any discussion on the budget) disclose his position with PRTC or any conflicts of interest. It is undisputed that Mr. Wilson did not recuse himself from the voting process on the 2024 budget.

ANALYSIS

As the special prosecutor, this analysis is limited to whether, under the Windsor Town Code, Mr. Wilson should have action taken against him for his ethical violation. In accordance with the Windsor Town Charter, section 5.8, the Town Prosecutor (in this case the special prosecutor) shall have the power and the duty, where a violation of the provisions of the Code of ethics is threatened or has occurred, to 1) bring a civil action or proceeding at law 2) or in equity for a judgment enjoining any violation of the provisions of the Code of Ethics. The Prosecutor 3) may also request damages in an amount not to exceed twice the damages suffered by the Town or twice the profit or gain realized by the elected or appointed official, public body member, or employee, whichever is greater.

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As stated in Mr. Lind’s original complaint against Mr. Wilson, Windsor’s Town Board has given guidance on an elected official’s ethical obligations. (Town Board Work Session, May 2, 2022)

“Ethical misjudgments greatly undermine public confidence . . . The theme that runs through codes of ethics is: It is not permissible to gain a personal benefit by virtue of holding public office.”

Mr. Wilson’s failure to disclose **simultaneously with discussion of the budget and at the time of his vote on the 2024 budget** has little weight in the analysis. While it is conceded that Mr. Wilson did not, during discussions of and/or on the date of the vote, disclose his position with PRTC, it was a well-known and established fact that Mr. Wilson was the executive director of PRTC at the time of the voting. There is no evidence to support that a **simultaneous disclosure during discussions of the budget or during voting** would have changed the outcome of the voting.

Mr. Wilson never withheld the fact that he was the executive director of PRTC. This fact was known by Shane Hale, who presented the 2024 annual budget to the Board, by Wade Wison who presented the budget to Shane Hale, and by Julie Cline, who served as a Board member and the liaison to the Poudre Trail Corridor Board. There is no evidence that any damage to the Town was caused by Mr. Wilson’s failure to **simultaneously disclose** his position with PRTC during discussions of the budget and/or at the time of the vote. Additionally, there is no evidence to show that Mr. Wilson’s failure to abstain from the vote on the 2024 budget damaged the Town. The budget unanimously passed.

There is no evidence to support that Mr. Wilson financially gained by his failure to disclose or abstain from the vote. Mr. Wilson’s does not own PRTC; he is an employee only. While he does get a salary for his position with PRTC, his salary did not increase because of the Town passing the 2024 budget. There is no evidence to suggest that Mr. Wilson “lobbied” for funds for PRTC from the Town and no evidence to suggest that Mr. Wilson “lobbied” for a financial gain as executive director of PRTC.

CONCLUSION

The Town Charter, under Article 5.8, gives the Town Prosecutor (as defined by Charter) an equitable remedy for enjoining an ethics violation. In this case, injunctive relief has little or no practical relevance due to Mr. Wilson no longer holding the position of Windsor Mayor or board member.

Also, under Town Charter 5.9, the Town has an option to void any contract which was the subject of any official action of the Town in which there was or is an interest prohibited by the Code of Ethics. In this case, it is possible for the Town to void the IGA but is not practical and not recommended. The public interest is better served by not voiding the contract.

Lastly, the Town may also request damages in an amount not to exceed twice the damages suffered by the Town or twice the profit or gain realized by the elected or appointed official . . . whichever is greater. There is a lack of evidence that the Town has been financially damaged or that Mr. Wilson realized a profit or gain.

The lack of evidence of any damage the Town incurred does not support an action against Mr. Wilson. Likewise, the evidence is lacking that Mr. Wilson gained financially in any way that he

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would not have already been entitled to (his salary). Given the totality of circumstances and lack of evidence, an action against Mr. Wilson is not warranted.

Sincerely,

PAISON & ROGERS, LLC

*/s/ Suzanne M. Rogers*

Suzanne M. Rogers